IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

BRANDON PARRISH and BRANDON BAKER, on behalf of themselves and others similarly-situated,	§	**CIVIL ACTION NO. 3:10-CV-2604-D**
Plaintiffs,	§	
vs.	§	
DEFENDER SECURITY COMPANY d/b/a DEFENDER DIRECT,	§	
Defendant	§	

CASE MANAGEMENT PLAN AND SCHEDULING ORDER

This is a putative collective action case under 29 U.S.C. § 216(b). Plaintiffs seek damages, on behalf of themselves and other allegedly similarly situated individuals, for alleged violations of the overtime wage provisions of the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq*. ("FLSA"). The Court has previously conditionally certified the class, established a notice and opt-in period, and approximately 385 individuals opted in. Due to the complexities inherent in litigating FLSA collective actions, the Parties jointly submitted this Case Management Plan and Joint Scheduling Order to streamline the litigation. The Court hereby approves, as modified, the procedures set forth by the Parties and adopts the following procedures and deadlines:

CASE MANAGEMENT PLAN

I. Selection of Discovery and Trial Plaintiffs

The parties have agreed to use a subset of the current plaintiffs for purposes of discovery and decertification (the "Discovery Plaintiffs"). The Discovery Plaintiffs shall include the named plaintiffs and 20% of the plaintiffs from the opt-in group as of the selection date. The parties shall select the Discovery Plaintiffs who are not named plaintiffs as follows: First, one-third of the Discovery Plaintiffs shall be selected through a mutually agreed-upon random process within thirty (30) days of the entry of this Case Management Plan and Scheduling Order. The parties shall work together to establish a selection methodology and shall present any disputes over methodology to the Court. Second, within fifteen (15) days of the random selection, Plaintiffs shall select one-third of the Discovery Plaintiffs and Defendant shall select one third of the Discovery Plaintiffs. If the number of Discovery Plaintiffs is odd, the extra individual will be selected in the random group. Discovery shall commence once these Discovery Plaintiffs are finally identified and all disputes relating to their selection have been resolved. By agreement or Court order, the parties may add additional opt-in plaintiffs to the group of Discovery Plaintiffs.

A new Discovery Plaintiff ("replacement Discovery Plaintiff") shall be chosen in the event a previously-selected Discovery Plaintiff is unable or unwilling to perform the duties of a Discovery Plaintiff. Further, if a Discovery Plaintiff is unwilling to perform the duties of a Discovery Plaintiff, including but not limited to failing to appear for deposition, he or she shall be deemed to have voluntarily dismissed his or her case against the Defendant, and shall not be permitted to re-join this action. Nothing about the language in this order shall prevent Defendant from asking the Court to require that the dismissal be with prejudice. The replacement Discovery Plaintiff will be chosen in the same manner as the Discovery Plaintiff for whom he or she is intended to replace (*i.e.*, if the previously-selected Discovery Plaintiff was chosen by random selection, then the replacement Discovery Plaintiff would be chosen in the same manner).

Nothing in this Case Management Order shall be interpreted or applied (1) as a waiver or limitation on any claim or position of Defendant that this case should be decertified and is not appropriate for a collective action, (2) to preclude or prevent Defendant from moving for decertification or from arguing at trial or on appeal that the case is not appropriate for a collective action and should not have been certified as such, or (3) to preclude or prevent Defendant from moving for the dismissal of any plaintiff or opt-in plaintiff.

If the collective action is *not* decertified by this Court, then the Discovery Plaintiffs will also be used for purposes of summary judgment and trial as further described herein. If, however, this Court decertifies the collective action, in whole or in part – or otherwise organizes the class into subsets – then the parties shall confer and notify the Court of any additional discovery or limitations they believe are necessary for the remainder of the litigation.

II. Scope of Discovery and Discovery Limits

The Parties are not required to serve initial disclosures under Rule 26(a)(1). Beginning 30 days after the Selection Date, and on a rolling basis thereafter, the Parties will provide for each Discovery Plaintiff a copy of all documents, electronically stored information, and tangible things that the party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment, rebuttal or foundation. This includes any documents evidencing or showing Discovery Plaintiffs' payroll information and hours of work (or any documents from which this information can be determined), including calendars or diaries maintained by Plaintiffs or time records or security records maintained by Defendant; and Plaintiffs' personnel files and payroll files. While documents discussed in this section may be produced on a rolling basis, the production of said documents shall be served no later than the earlier of 90 days after the Selection Date or two weeks before the deposition of the applicable Discovery Plaintiff.

A. Depositions

Plaintiffs anticipate taking the depositions of selected current and former supervisors of the Discovery Plaintiffs, current and former co-workers of the Discovery Plaintiffs, human resources professionals, current and former counsel (if necessary and permissible), experts, and corporate representatives on designated subject matters.

Defendant anticipates taking the depositions of the Discovery Plaintiffs and any of the Discovery Plaintiffs' current and former co-workers, spouses, significant others, and/or roommates. Defendant also anticipates taking the depositions of experts and any other person who is identified in either side's discovery responses as having knowledge of relevant facts. Defendant reserves the right to seek leave to take depositions of additional plaintiffs, if necessary.

The Parties will attempt to provide at least 14 days' notice for depositions unless otherwise agreed by the Parties. The Parties will, to the extent practicable, schedule the depositions of all witnesses within the same geographic region at the same time and otherwise cooperate to make travel more efficient. The presumptive time limit under the Federal Rules will apply to all depositions.

B. Written Discovery

Plaintiffs may issue a total of 25 Interrogatories, 25 Requests for Admission, and Requests for Production to Defendant. Defendant may issue 25 Interrogatories, 25 Requests for Admission, and Requests for Production to each Discovery Plaintiff. Defendant reserves the right to seek leave to issue discovery to additional plaintiffs, if necessary. The Parties will provide the objections or responses to written discovery on a rolling basis but shall provide objections or responses within 90 days of service or two weeks prior to a deposition, whichever is earlier. If Defendant maintains or has access to compensation data or data that tend to prove or disprove hours worked for the class of opt-in Plaintiffs (such as time records), that data may also be requested and produced. These data may be used for purposes of determining particularized damages only. Discovery to third parties or experts will be governed by the Federal Rules of Civil Procedure.

III. Representative Testimony and Limits on Use of Technician Testimony.

To streamline and simplify this collective action, the parties have agreed to use discovery relating to the Discovery Plaintiffs, or some subset thereof if possible, as representative evidence for purposes of a decertification motion. If the collective action is *not* decertified by this Court, then the Discovery Plaintiffs will also be used for purposes of summary judgment and trial. As such, the Parties have agreed upon certain limitations on the use of testimony for purposes of decertification (and – if the case remains completely certified and as currently organized – for purposes of summary judgment and trial) as follows:

- Except as provided below, neither Plaintiffs nor Defendant shall use testimony from any opt-in plaintiff in this case who is not selected to be a Discovery Plaintiff.
- Except as provided below, neither Plaintiffs nor Defendant shall use testimony from any of Defendant's other technicians who did not opt in to this case.
- Provided the witnesses are identified to the opposing party at least 60 days before the close of the Discovery Period, the Parties *are* permitted to use testimony from technicians who are not Discovery Plaintiffs for purposes of supporting or rebutting a particular Discovery Plaintiff's testimony or the testimony of another fact witness.

The Parties may request relief from these limitations for good cause shown at any time by filing a motion with the Court. In addition, if the Court decertifies the collective action, in whole or in part – or otherwise organizes the class into subsets – these restrictions shall not apply and the parties shall confer and notify the Court of any additional discovery or limitations they believe are necessary for the remainder of the litigation.

SCHEDULING ORDER DEADLINES

The following schedule will govern the deadlines in this case. A deadline may be altered by the Court for good cause.

1.	Selection of Randomly-Selected Discovery Plaintiffs ("Selection Date")	30 days after entry of the Case Management Plan and Scheduling Order
2.	Selection of Each Parties' Discovery Plaintiff Choices	15 days after Selection Date
3.	Initial Exchange of Documents	30 days after Selection Date (and on rolling basis thereafter – but not later than the earlier of 90 days after Selection Date or 2 weeks prior to the applicable Discovery Plaintiff's deposition)
4.	Deadline to move for leave to amend pleadings and join additional parties	December 31, 2011
5.	Non-expert Discovery deadline	November 15, 2012
6.	Designation of experts by Plaintiff	August 15, 2012
7.	Plaintiffs' Expert Report	August 30, 2012
8.	Designation of Experts by Defendant	September 15, 2012
9.	Defendants' Expert Report	September 30, 2012
10.	Designation of Rebuttal Experts	30 days after report
11.	Mediation deadline	May 15, 2012
12.	Deadline for filing of decertification motion	January 15, 2013
13.	Dispositive motion deadline	May 15, 2013

	(including summary judgment and *Daubert* Challenges)	
14.	Selection of Trial Plaintiffs	June 1, 2013

SO ORDERED.

September 6, 2011.

SIDNEY A. FITZWATER
CHIEF JUDGE